

FCC MAIL SECTION

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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-294

In the Matter of

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Alexander City, Alabama and
West Point, Georgia)

RM-8342

NOTICE OF PROPOSED RULE MAKING

Adopted: November 4, 1993; Released: December 8, 1993

Comment Date: January 31, 1994

Reply Comment Date: February 15, 1994

By the Assistant Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by Solar Broadcasting Company, Inc. ("petitioner"), licensee of Station WSTH-FM, Channel 291C1, Alexander City, Alabama, requesting the reallocation of its channel to West Point, Georgia, and modification of its license accordingly.

2. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules. In this regard, petitioner advises that the requested reallocation to West Point is mutually exclusive with the present allotment of Channel 291C1 at Alexander City, since no change in Station WSTH-FM's transmitter site is contemplated. The distance between West Point and Alexander City at Station WSTH-FM's existing tower site is 30.3 kilometers (18.7 miles) whereas a distance of 245 kilometers (152 miles) is required by Section 73.207(b)(1) of the Commission's Rules between Class C1 co-channels. Petitioner advises that, operating with existing facilities from its present site, Station WSTH-FM would be able to provide a 70 dBu signal over the entire boundaries of West Point. Petitioner adds that Alexander City (population 14,917)¹ would continue to receive city grade service from Station WSTH-FM, as well as local aural transmission service from its co-owned fulltime Station WTLN(AM) and from fulltime Station WACD-AM. Therefore, petitioner comments that adoption of its proposal will not leave Alexander City unserved. Petitioner advises that the city of West Point, Georgia, is served locally by Station WCJM(FM), Channel 265A, and fulltime Station WPLV-AM. We also note that fulltime Station WRDL(AM) is licensed to West Point.

TECHNICAL STATEMENT

3. A staff engineering analysis reveals that Channel 291C1 can be allotted to West Point consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, at the presently licensed site of Station WSTH-FM, located 30.3 kilometers (18.8 miles) southwest of Alexander City at coordinates 32-45-33 and 85-28-04.

4. Although neither Alexander City, Alabama, nor West Point, Georgia, is located within an Urbanized Area, the licensed site of Station WSTH-FM at Alexander City is located 55.8 kilometers (34.7 miles) northwest of Columbus, Georgia, which is an Urbanized Area. West Point is located 49.1 kilometers (30.5 miles) north of Columbus. We also note that according to Commission records, Station WSTH-FM's signal is retransmitted via its translator Station W293AD (File No. BLFT-930713TD), to provide service to Columbus, Georgia.

5. We believe the proposal warrants consideration. The proposal would not deprive Alexander City of its only local transmission service, and its use is mutually exclusive with West Point. However, we request that petitioner provide additional information regarding the public interest benefits that would accrue from the reallocation of Channel 291C1 to West Point, Georgia since it proposes no reception change in the present technical facilities of Station WSTH-FM to accommodate its proposal. We note that in support of its proposal, petitioner cites to the reallocation of Channel 231C1 from McComb, Mississippi to Kentwood, Louisiana, in MM Docket No. 90-282, 6 FCC Rcd 3367 (1991), and a pending proposal concerning the reallocation of Channel 300C from Poplarville to Bay Saint Louis, Mississippi, in MM Docket No. 90-163, 5 FCC Rcd 1913 (1990). However, each of those proceedings was filed prior to the adoption of the *Memorandum Opinion and Order* in MM Docket No. 88-526 clarifying the standards governing change of community petitions for rule making. See 5 FCC Rcd 7094 (1990).

6. In light of the above, we shall propose to modify Station WSTH-FM as requested, to specify West Point, Georgia, as its community of license. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest nor require that petitioner demonstrate the availability of an additional equivalent channel at West Point.

7. Accordingly, we seek comments on the proposal to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the communities listed below, as follows:

City	Channel No.	
	Present	Proposed
Alexander City, Alabama	291C1	--
West Point, Georgia	265A	265A, 291C1

8. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we

¹ Population figures cited herein were taken from the 1990

U.S. Census.

note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

9. Interested parties may file comments on or before **January 31, 1994**, and reply comments on or before **February 15, 1994**, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

Allen Woodall, Jr.
President, Solar Broadcasting
Company, Inc.
1236 Broadway
Columbus, GA 31994

10. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See *Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules*, 46 FR 11549, February 9, 1981.

11. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 634-6530. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no *ex parte* presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An *ex parte* presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Victoria M. McCauley
Assistant Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments; Service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street N.W., Washington, D.C.